IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 840 OF 2012

Mrs. Krishna H. Bajaj	**}**	**Petitioner**
versus		
Union of India and Anr.	**}**	**Respondents**

Ms. Sonal i/b. Mr. Vivek M. Sharma for the Petitioner.

Mr. M. S. Bharadwaj for Respondent Nos. 1 and 2.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 21, 2015

P.C. :-

By this Petition, under Article 226 of the Constitution of India, the Petitioner seeks a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, order or direction, directing the Respondents to file appropriate criminal proceedings for offences punishable under the Indian Penal Code.

2) It is claimed in the Petition that in the course of her business, the Petitioner acquired shares of one public limited company, namely, Sesa Goa Limited. We are not concerned with the acquisition of the shares or the composition of M/s. Sesa Industries Limited.

3) The Petitioner has then narrated as to how the company resolved to increase its shareholding. In other words, M/s. Sesa Goa Limited resolved to increase its shareholding in M/s. Sesa Industries Limited and claims that M/s. Sesa Industries Limited was engaged in the business of manufacturing of pig-iron and the major raw materials required for the manufacture of pig-iron, namely, iron-ore and metallurgical coke have always been procured and supplied to it, by its holding company, namely, Sesa Goa Limited since inception. These shares of M/s. Sesa Industries Limited were never listed on the Stock Exchange, though the company M/s. Sesa Goa Limited promised to do so. The allegation is that M/s. Sesa Goa Limited transferred a depreciated pig-iron plant into the books of M/s. Sesa Industries Limited at a price of Rs.40 crores in March, 1996 when M/s. Sesa Industries Limited itself had constructed an identical plant having the same parameters at a cost of Rs.25.01 crores and which plant had been commissioned just six months prior to the said transfer having been effected by M/s. Sesa Goa Limited into the books of M/s. Sesa Industries Limited. Then, the Petitioner narrates as to how M/s. Sesa Industries Limited incurred heavy losses. It is also alleged that the management of M/s. Sesa Industries Limited requested the holding company, namely, M/s. Sesa Goa Limited to buy-back the shares of M/s. Sesa Industries Limited from its minority shareholders and provide

them with some sort of an exit option. The details of the transactions in that behalf are set out.

4) The Petitioner submits that the first Respondent, on the basis of the Petitioner's complaint and another complaint, ordered an inspection of the books of M/s. Sesa Goa Limited and M/s. Sesa Industries Limited under the provisions of Section 209A of the Companies Act, 1956. An officer was deputed by the Ministry of Company Affairs to investigate and conduct inspection. The said officer, after conducting inspection of documents and other records, issued two reports dated 17th February, 2006 and 20th March, 2006. These reports, according to the Petitioner, prove her allegations. The Petitioner relies extensively on the contents of these reports and states that there were intervening developments with regard to the merger/amalgamation of two companies. A Company Petition being filed and an order thereon. Then, the Petitioner states that there was a further report from the Registrar of Companies, Goa under section 234 of the Companies Act, 1956. Based on that, the Central Government was of the opinion that investigation under section 235 of the Companies Act, 1956 was necessary. Then, reference is made to certain directions in the orders of this Court and the proceedings before the Hon'ble Supreme Court of India. The scheme of amalgamation may have been sanctioned, but,

civil and criminal proceedings would never be concluded nor initiation thereof prohibited by sanction of any scheme. It is then stated that a report, copy of which is at Annexure 'C' and another report, copy of which is at Annexure 'D' were accepted by the Central Government. The Petitioner's son sought certain details under the Right to Information Act, 2005. The Petitioner found that by the reports, it is evident that the offences punishable under the Indian Penal Code have been committed. The grievances of minority shareholders have not been redressed. The Petitioner claims that the assurance given by the first Respondent to take appropriate action against the company and their management did not materialise, as the action only under the Indian Companies Act, 1956 has been initiated. These actions and prosecution would not result in imposition of any sentence of imprisonment but nominal fine. Thus, relevant sections of the Indian Penal Code, as suggested in the report, should have been invoked and criminal prosecution launched.

5) It is on this basis and the averments in para 3 of the Petition that the aforementioned relief has been claimed.

6) We do not see how in the above facts and circumstances and by alleged inaction on the part of Respondent No. 1 can a Writ of Mandamus and in terms claimed by the Petitioner can be issued. The

remedy of such aggrieved citizens for the alleged inaction of the pubic bodies is to approach the competent Criminal Court and institute a private complaint. Such a complaint is imminently maintainable. Once the criminal law can be set in motion by any aggrieved party in this manner and thereafter all further steps in accordance with the Code of Criminal Procedure, 1973 will follow, then, we have not doubt that the Petitioner has an alternate equally efficacious remedy. We should not exercise our discretion simply because the Petitioner has alleged that there are serious offences and punishable under the Indian Penal Code committed by those in-charge of the two companies and the companies themselves. If by any act of omission and commission the Petitioner and minority shareholders are allegedly cheated and defrauded, then, they can always approach the competent Criminal Court.

7) In the light of the above discussion, we do not think that we can entertain this Writ Petition. It is disposed of with liberty as above.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**